UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

INDEPENDENT DISPATCH, INC Plaintiff,) Civil Action No.: 05-10950 RWZ
v.)
F. C. MEYERS PACKAGING, LLC	THIRD PARTY COMPLAINT
Defendant,)
Plaintiff-in-Counterclaim)
)
v.)
INDEPENDENT DISPATCH, INC.)
Defendant in Counterclaim,)
Third Party Plaintiff)
•)
v.)
)
Unisource Worldwide, Inc.)
Third Party Defendant.)

Defendant-in-Counterclaim, Independant Dispatch, Inc. by way of Third-Party Complaint against Third Party Defendant, Unisource, Inc. states as follows:

INTRODUCTION

1. Independent Dispatch, Inc. ("IDI") filed suit against Defendant, F.C Meyers Packaging, Inc. (FC Meyer) to recover \$28,486.60 in freight charges, for interstate transportation services provided at the request of and to the benefit of FC Meyer. FC Meyer brought a counterclaim against IDI seeking \$15,000, as the full value for an allegedly non-delivered shipment. Third Party Defendant, Unisource, Inc. accepted delivery of the shipment, and IDI seeks to recover the goods or their full value, plus interest, costs and fees.

PARTIES

2. Third-Party Plaintiff, Independent Dispatch, Inc. (hereinafter "IDI") is a Oregon

corporation with a principal place of business at 214 N.E Middlefield Road, Portland, Oregon.

IDI is a freight forwarder and intermodal sales agent on the shipments at issue.

3. On information and belief, Third-Party Defendant, Unisource Worldwide, Inc. is a corporation with its corporate headquarters in Norcross, Georgia, and distribution facilities around the country, including Phoenix, Arizona, Pleasanton, California, and one at 9 Crystal Pond Road, Southborough Massachusetts.

JURISDICTION

- 4. The Court has subject matter jurisdiction under 28 U.S.C. §1337 as the counterclaim alleges loss or damage to freight in interstate commerce subject to the Carmack Amendment 49 U.S.C. §§11706 and 14706. The Court also has pendant jurisdiction under 28 U.S.C. §1367
 - 5. The Court has personal jurisdiction as Third Party Defendant has a facility in this

STATEMENT OF FACTS

- 6. On or around November 12, 2004, FC Meyers faxed a request for a 53' container to be dropped at its Jeannette, Pennsylvania facility for deliver to Phoenix.
 - 7. IDI caused container number EMHU 241861 to be dropped as requested.
- 8. Unbeknownst to IDI, FC Meyers loaded the container with a shipment for Third Party Defendant, Unisources' Pleasanton, California facility.
- IDI delivered the container to Unisources' Phoenix, Arizona facility, where it was accepted, signed for and received.
- 10. On May 6, 2005, Charles Steinbrecher of FC Meyer, filed a claim for the full value of the shipment, as if the shipment was a total loss. (Exhibit 1)
- 11. Though IDI had repeatedly supplied FC Meyer with proof of delivery of the shipment to Unisource's Phoeniz facility, FC Meyer sued IDI seeking \$15,000, the full value of the shipment,

as if the shipment were completely lost or destroyed.

12. IDI seeks possession of the shipment or the full value of the shipment from Unisource, and damages for knowingly filing or causing a false claim to be filed.

REPLEVIN

- 13 IDI repeats and realleges paragraphs 1 through 12 as if set forth fully herein.
- IDI delivered the shipment in container EMHU 241861 to Unisource,
 Phoeniz, AZ.
- 14. FC Meyers, on its own or on Unisource, Pleasanton, CA's behalf, has asserted a claim for the full value of the shipment, as if the shipment were completely lost or destroyed.
- 15. To the extent that Unisource, Phoeniz, AZ has no right, title or interest in the shipment and should not have accepted delivery, IDI as the forwarder is entitled to return of the goods, and seeks possession of the shipment, to return it the rightful owner.

CONVERSION

- 16. IDI repeats and realleges paragraphs 1 through 15 as if set forth fully herein.
- 17. IDI delivered the shipment in container EMHU 241861 to Unisource, Phoeniz, AZ.
- 18. FC Meyers, on its own or on Unisource, Pleasanton, CA's behalf, has asserted a claim for the full value of the shipment, as if the shipment were completely lost or destroyed.
- 19. To the extent that Unisource, Phoeniz, AZ has no right, title or interest in the shipment, and should not have accepted delivery IDI seeks return of the goods or the full value of the goods to compensate the true owner.

BAD FAITH FILING OF CLAIM

- 20. IDI repeats and realleges paragraphs 1 through 19 as if set forth fully herein.
- 21. IDI delivered the shipment in container EMHU 241861 to Unisource,

Phoeniz, AZ.

- 22. FC Meyers, on its own or on Unisource's behalf, has asserted a claim for the full value of the shipment.
 - 23. Unisource knew the shipment was not lost or destroyed.
 - 24. Unisource knew that the shipment was simply misdelivered.
- 25. Neither Unisource nor FC Meyer ever asked IDI to re-deliver the shipment to California.
- Even though Unisource knew the shipment was not lost or destroyed, but was in fact in its own possession, it filed a claim for the full value of the shipment with FC Meyers and caused or allowed FC Meyer to file a claim for the full value of the shipment with IDI.
 - 27. Unisource is not entitled to both the goods and the value of the goods.
- 28. Unisource's claim was brought in bad faith, and has put IDI to unnecessary fees and costs in defending against the counterclaim and bringing this action.

WHEREFORE, Third Party Plaintiff prays for the following relief:

- That the Third Party Plaintiff have and recover of the Third Party Defendant the
 possession of the shipment, or sum of \$15,126.00 plus interest from the date such
 shipment was delivered;
- That the Third Party Plaintiff have and recover its reasonable attorney fees from Third Party Defendant;

- 3. That the costs of this action be taxed to the Third Party Defendant;
- 4. And for all such other and further relief as the Court may deem just and proper.

Respectfully submitted,

Liese Gallagher Howarth

BBO # 637101 GALLAGHER & HOWARTH, P.C. 68 Bridge Street, Suite 207 Suffield, CT 06078 (860) 254-5434

(860) 254-5430 Facsimile

Date: July 12, 2005

CERTIFICATE OF SERVICE

I, Liese G. Howarth, hereby certify that on July 13, 2005, I served via U.S. Mail, postage prepaid, a copy of the foregoing Third Party Complaint to the following attorney:

Matthew P. Schaefer Brann & Isaacson 184 Main Street, P. O. Box 3070 Lewiston, ME 04243-3070

Liese G. Howarth, Esq.

GALLAGHER & HOWARTH, P.C.

68 Bridge Street

Suite 207

Suffield, CT 06078

Phone: (860) 254-5434 Facsimile: (860) 254-5430

Attorney for Plaintiff

S- 6-05; 9:54AN;JEANNETTE PACKAGING

:7245273575



Charles J. Steinbreche Production / Distribution Manage: 1000 Thomas Avenue Jeannette, PA 1564 Phone: 724-523-5565 x 11!

Fax: 724-527-479

Email:csteinbrecher@fcmpackagingsales.com

May 6, 2005

TO: Ron Johnson Independent Dispatch

FR: Charles Steinbrecher Production / Distribution Manager

RE: Shortage Claim

To whom it may concern,

Due to your inability to provide a proof of delivery for our load #9296, I am ser ding a credit or charge back for the entire amount of the invoice.

Thank You,

Charles J. Steinbrecher

Charles J. Steinbrecher Production / Distribution Manager 1000 Thomas Avenue Jeannette, PA 15644

Phone: 724-523-5565 x 11!

Fax: 724-527-4791

Email:csteinbrecher@fcmpackagingsales.com

May 6, 2005

TO: Ron Johnson Independent Dispatch

FC Meyer Packaging ⊯

FR: Charles Steinbrecher Production / Distribution Manager

RE: Shortage Claim

To whom it may concern,

Please remit the attached shortage claim as you signed for 1,176 cases and c elivered only 0 (zero). The consignee has no record of receiving.

Thank You,

Charles J. Steinbrecher

OVERAGE SHORTAGES & DAMAGES

ADDR INVOICE CUST CITY ITEM Price #PIS Total

9296 Unisource 4225 Hacienda Drive Pleasanton, 94588 ALL \$15,167.52 1 \$ 15,167.52

\$ 15,167.52

Tra er

These items were short on a load picked up at our facility on 11/22/04. You signed for 1176 cs. and delivered 0. Please remit the amount shown.

FAX

SHEET

Pages:

Company: F C MEYER

Attn: Chuck Steinbrecher

Fax #: 724.527.3575

Subject: P.O.D. for trlr# EMHU 241861

Date: 5.31.05 4. 7.05

2, including cover page

From the desk of...

Ron Johnson
Account Manager
rjohnson@indep_ndentdispatch.com

Independent Dispatch, Iric. 214 I E Middleffeld Road Portland, Oregon 97211-1299

> 877-535-6411 503-535-6411 Fax: 503-327-2256

	J& L TRANSPO Box 6325 - Phoeni (602) 278-9192 FA	x, Arizona 85005-6 XX (682) 278-4531	· •	4	8104
SHIPPER FC HEYER PACKAGING		CONSIGNEE	8/	#	(602)278-2516
PORTLAND OR		844 N 47th PHOENIX AZ	AAE	1	UNISOURC
Ref. #		P.O. #	112638		
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Confirmation Report - Memory Send

Date & Time: Jun-07-2005 02:41pm Tel line : 503-535-6538 Machine ID : IDI Itermodal

Job number

: 002

Date & Time

: Jun-07 02:40pm

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: 917245273575

Number of pages

: 002

Start time

: Jun-07 02:40pm

End time

: Jun-07 02:41pm

Pages sent

: 002

Status

: OK

Job number

: 002

*** SEND SUCCESSFUL ***

COVER

SHEET

Company: FCMEYER

Attn:

Chuck Steinbrecher

Fax #:

724.527.3575

Subject:

P.O.D. for trir# EMHU 241861

Date:

5.31.05 6. 7.05

Pages:

2, including cover page

From the dosk of...

fton Johnson Account Monager rjohnson@indepr identalspatth.com

Indepoi dent Dispeten, Ind. 274 f. & Mindefeld Road Portland, Cregon 87211-1289

877-636-6411 \$03-635-6411 'ex: 503-327-2255

Confirmation Report - Memory Send

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: 827

*** SEND SUCCESSFUL ***

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FAX

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Company: FC MEYER Attn:

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Chuck Steinbrecher

Subject:

724.527.3575 P.O.D. for trir# EMONU 241861

Date:

5.31.05

Pages:

2, including cover page

From the deck of...

Ren Johnson Account Manager Johnson@indep indentdispatch.com

Indapa ident Dispetch. Inc. 214 I E Middleffold Road Pertiend, Tragon 87211-1299

877-335-6411 503-635-6411 Fax: 503-227-2268

Case 1:05-cy-10950-RWZ Filed 07/15/2005 Document 7-2 S- 8-06: 4152PM;JEANNETTE PACKAGING 583-285-4035 I fated this to 05:, T. My boss wants me to charge Then on IDI back for the entire load if I don't get a POD roday. You are The only broker I use That uses cartage company. OS IT as a Heare help me out with this, That for The 724-923-5375 CAF 115

From DI CUSTOVER SERVICE May-01-2005 15:58

+2534450771

T-947 P.88 /001

Carrier: J& L Transport tion Inc.

Independent Dispatch, Inc.

214 N.E. Middlefield Rd. Portland, OR 97211-1299

Phone: 503-285-4251 Fax: 503-285-4035

Fax No: 602-278-4931 Rate: 120,75.

Shipment Date: 11/19/04

PRENOTIFICATION

Equip Type: 53' EMHU CONTAINER

Trailer No. EMHU 241861

Seal No. Weight

43000

Pieces: 13

Commodity Cartons

Spipper:

FC Meyer Packaging

Artiving at: UP/PHOEXPRES AZ

Deliver To 1. Unisource

844 N 47th Ave

Pheonix, AZ

instructions: Call for Appointment

Contact:

Phone No: 602-278-1111 PO No.: 43412638

IDI Control No: 654292

(This number must be referenced when invoicing I. iI.)

If you have any questions, please contact:

Sean Walker

Phone 503-535-6412 Fex: 503-327-2266

IDI Document System Cover Sheet Intermodal Department

Cust Svc Rep: SW

Customer Name:

FC Meyer Packaging

Order No.:

654202

Invoice No:

249032

Date:

November 19, 2004

Trailer/Container No:

EMHU 241861

Customer No:

5566

Shipper No:

99999

Customer PO No:

9756

Consignee PO No:

43412638







EDI / FAX				
Date:	(C)1119	Todays Date:	11.12	04
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Shipper:	FC MEYER	Pickup Date:	ASAPCALL 24 HO	• •
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Consignee:	UNISOURCE	PO#:	43412	138
	844 NORTH 47TH AVE	Phone #:	(602) 27	-3411
-	PHOENIX, AZ	Contact:		
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REQUEST FOR RAIL BILLIN	Pluse Pr B:11
TO Kenen	DATE 11-22-04
FROM: OST TRUCKING CO.	, inc.
PH# 1-800-517-9103	•
FAX# 724-863-8926	
STEAMSHIP LINE:	EMP
CONTAINER#	GMHU 241861
CHASSIS#	
BOOKING#	654202
SEAL#	
WEIGHT:	
OTHER:	
HAZARDOUS CARGO:	
PLEASE SEND EMPTY RAI	L BILLING TO:
CSX / PITTSBURGH,PA.	NAS PITTSE URGH,PA.
PH# 412-856-7498	(PH# 412-89: -5525
FAX# 412-856-7806	FAX# 412-81 3-5526
IF THERE ARE ANY PROBL	EMS WITH PROCESSING THIS RAIL
BILLING CONTACT OST TR	UCKING AT THE ABOVE PHONE#
NUMBER OF PAGES SENT	

REQUEST FOR RAIL BILLING	Plesse Both						
TO Kenen	DATE 11-22-04						
FROM: OST TRUCKING CO., INC	·						
PH# 1-800-517-9103							
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TIME 11.15 NUMBER OF PAGES SENT

25 Rule 1 : No

BILL OF LADING

BOL No: 654202

BOL Date: 11/19/04

CN Reservation No.

Car Initial and No: EMHU 241861

Kind: CN

53 ft No of Cars: 1 Plan:

Origin Ramp: PTTTSBURGH, PA

Destination Ramp: PHOEXPRES, AZ

Routing:

NS CHGO UP

Bill-To:

Independent Dispatch, Inc. 214 NE Middlefield Road

Portland OR 97211 Phone No: 503-265-4251

J & L Transportation Inc. 602-278-4931

Shipper:

Length:

Independent Dispatch, Inc. 214 NE Middlefield Road

Portland OR 97211 Phone No: 503-285-4251

Method of Payment:

Notify Party:

Prepaid

STCC Code:

2646210

FDA No

Net Weight:

43000 Pounds

Plecas:

13.00

UM: UNT

Saal No:

Description: Cartons

Additional Names:

Beneficial Owner:

FC Meyer Packaging

1000 Thomas Ave

Jeannette PA

Crosstown Switch Party:

Party Performing Certification:

Independent Dispatch, Inc.

Customs Broker:

Ship From:

1. FC Møyer

Jeanette PA

Deliver To:

1. Unisource

844 N 47th Ave Pheonix AZ

Price Authority:

NSPQ9000

By: FC MEYER PKG-INV/DIST FAX;	7245284791; Nov-12-04 12:17PM;	Page
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FC Meyers Pa	ckaging Intermodal Booking	
Ral Confirmat	o n Ron's Direct Fax: 503-327-2256 Office Fax: 503-285-4035	4-077
TO: Ron Johnson/IDE 214 N.E. Middleffield Portland, Oragon 972 Attention: Ron Johns Direct Dial; E77-5; Office: 800-8;	1-1299 cm 35-6411	
PICKUP/ ACCOUNT:	PC Meyes Packaging Account #5514 1000 Thomas Avenue Jeannette, PA 15644 Attention: Chuck Steinbrecher 724-523-5565 Extension 115	
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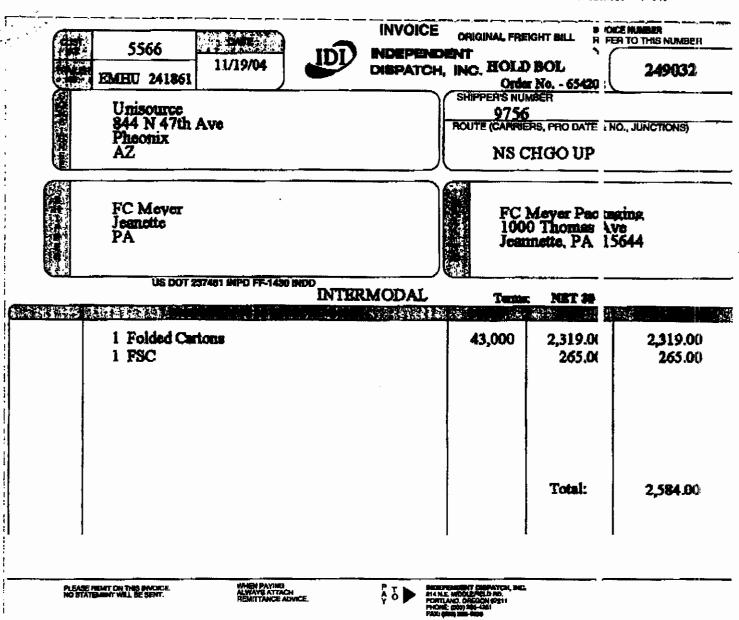
EH53G62025 - AutoBook for Standby # 855064

Booking#Customer#Equip Size Equip TypeRRRampEH53G62025580053 U288NSPIT



EH53G62025 - AutoBook for Standby # 855064

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